

Charlene Dindo

From: Robin Chesnut-Tangerman
Sent: Wednesday, June 7, 2023 5:28 PM
To: Trevor Squirrel; Seth Bongartz; Carol Ode; Mark Higley; Virginia Lyons; Mark MacDonald; Christopher Bray; David Weeks; Charlene Dindo; Anthea DexterCooper
Subject: Thursday LCAR, 23-E04 - Hemp Rule

Dear Chair Squirrel and LCAR members,

I apologize for the late timing of this letter. I am writing to ask that LCAR delay final review of 23-E04, the Cannabis Control Board's Emergency Rule on Synthetic and Hemp-Derived Cannabinoids, scheduled for Thursday June 9th.

Both Rep. Andriano and I have had constituents in the hemp industry reach out to us about this issue, and they have serious concerns about the rule that we believe need to be considered, regarding both the policy and the process.

As indicated in the filing there was no public hearing or input on this emergency rule, particularly from the producers and processors who are most directly effected and on whom the impacts land hardest.

As an emergency rule 23-E04 has already gone into effect, producers have had to pull their product from the shelves and have been effectively shut down, with no input into the process. This was done on an emergency basis, to prevent imminent peril to public health, safety, or welfare. We do question the validity of that claim and whether emergency rule making is appropriate in this case. Nevertheless, a delay in the final review does not prevent the Cannabis Control Board from implementing the rule, indeed it has already gone into effect. What it does do is provide an opportunity for those most directly effected to have a voice in the process before final approval.

We are happy to provide witnesses at a later meeting or a public hearing to testify on the other, as yet unheard side of this complex issue. I note that your agenda for the meeting list the General Counsel of the Cannabis Control Board as the only person providing testimony. Purely as matter of equity this is unfair and we ask for balance.

Respectfully,
Rep Robin Chesnut-Tangerman
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What follows is a short primer on the issues in question, compiled by Rep Andriano.

Delta-9-tetrahydrocannabinol (D9-THC) is generally considered to be the major intoxicating chemical in cannabis. It is naturally occurring in the cannabis plant, and most people who want to “get high” look for high concentrations of D9-THC in their cannabis.

However, D9-THC is not the only chemical in cannabis that has an impact on the human body. The second most well known is cannabidiol (CBD). CBD has been found to be responsible for many of the calming and anti-inflammatory effects of cannabis. Because of this, CBD has become very popular for those who are looking to reduce anxiety, sleep better, and get the anti-inflammatory effects of cannabis without the intoxicating THC high.

In 2014, the federal government passed the Farm Bill that created a legal framework for farmers to begin to be able to grow hemp and produce hemp-derived products. This was expanded in the 2018 Farm Bill, allowing hemp cultivation more broadly, explicitly removing restrictions on the sale, transport, or possession of hemp-derived products, so long as those items are produced in a manner consistent with the law. Vermont’s Hemp Production Plan, like many states, requires that the total THC of the hemp be 0.3% or less on a dry weight basis measured no sooner than 30 days before harvest, among other factors, to be considered legal hemp under the provisions of the 2018 Farm Bill.

This legal pathway for hemp has been critical in the development of the hemp industry both in Vermont and nationwide. While hemp can be used for a wide variety of applications, for the purposes of considering this rule, the most important one is the use of hemp in either smokable or edible form for the purpose of ingesting CBD. There are many companies in Vermont who are at the forefront of producing CBD products and selling them all over the country to people who are looking for those health benefits.

The CCB’s involvement derives from the discovery of synthetic cannabinoids derived from CBD, specifically, delta-8- and delta-10-tetrahydrocannabinol (D8-THC and D10-THC). It is my understanding that these synthetic cannabinoids are produced through the use of a chemical process in a laboratory on the CBD molecule, and don’t occur in any meaningful quantities in nature. D8 and D10-THC have a similar intoxicating effect to D9-THC, but no one knows if they are safe or not. In fact, according to the FDA, between January 2020 and February 2022, there were a bit less than 2,500 adverse reports nationwide attributed to D8-THC.

Recognizing this, Act 158 of 2022 allowed the CCB to regulate D8-THC, D10-THC, and other synthetic cannabinoids. While the Emergency Rules may help address the issues surrounding these synthetic cannabinoids, it is likely that they will have the unintended consequence of severely impacting the CBD hemp industry in Vermont.

While our constituents would do a much better job explaining the flaws of these three Emergency Rules, I’d like to briefly summarize some of the concerns. The main problem is in Emergency Rule 2, which reads:

“A consumable product that is not cannabis or a cannabis product is presumptively prohibited regardless of the delta-9 tetrahydrocannabinol concentration of any plant from which the product is sourced, if the product, in the form offered to consumers:

- (a) contains total tetrahydrocannabinol in a concentration exceeding 0.3 percent on a dry weight basis; or
- (b) contains more than 1.5 mg tetrahydrocannabinol per serving, where “serving” is the amount reasonably ingested by a typical consumer in a single instance; or
- (c) contains more than 10 mg total tetrahydrocannabinol per package, unless the ratio of cannabidiol to tetrahydrocannabinol is at least 20:1; or
- (d) has the dominant market appeal of mimicking the intoxicating effects of tetrahydrocannabinol.”

Emergency Rule 2 has the potential effect of making all consumable hemp products prohibited because they can be interpreted as having “the dominant market appeal of mimicking the intoxicating effects of tetrahydrocannabinol.” While no user of THC would consider the effects of CBD and THC to be similar, it is an open question of whether the CCB or a judge would interpret CBD to mimic the intoxicating effects of THC. This will have a chilling effect on the consumable hemp industry in Vermont, causing us to fall behind in competition with producers in other states in selling these products. It would also fly in the face of the firewall between agricultural hemp and regulated cannabis in state and federal statute.

In addition, Emergency Rule 2(a) may be impossible for hemp cultivators to adhere to. Under Vermont’s Hemp Production Plan, hemp is measured for total THC content no more than 30 days before harvest. It is my understanding that the reason for this is that there is quite a bit of evolution in the makeup of the cannabinoids in the final 30 days. The industry, our state government, and the federal government has accepted that the 0.3% limit 30 days before harvest is acceptable to allow for the minimization of THC and allowing the maximization of CBD (it’s hard to increase CBD concentration without also increasing THC concentration). By requiring the product at time of sale to have no more than 0.3% total THC, as I would interpret Emergency Rule 2(a), is a violation of Vermont’s Hemp Production Plan and the intent of Congress and the Vermont General Assembly to have hemp that meets these rules handled as an agricultural product.

There are also concerns about packaging and servings that our constituents would be able to speak more eloquently about.

There are real concerns about D8 and D10-THC, which shouldn’t be minimized. However, when CCB regulations could have the unintended consequence of severely impacting an area of the state agriculture sector that it does not regulate, we must pause and give representatives from that sector the opportunity to have input in the formation of that rule.

Rep. Robin Chesnut-Tangerman
Vice Chair, General and Housing Committee